

**United States Department of Labor
Employees' Compensation Appeals Board**

D.K., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Santa Clarita, CA, Employer**

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**Docket No. 15-1232
Issued: August 20, 2015**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 12, 2015 appellant filed a timely appeal from an Office of Workers' Compensation Programs' (OWCP) merit decision dated December 31, 2014 and a nonmerit decision dated March 25, 2015. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish that he sustained a right-sided carpal tunnel condition in the performance of duty; and (2) whether OWCP properly denied appellant's request for a review of the written record as untimely under 5 U.S.C. § 8124.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 16, 2014 appellant, a 65-year-old letter carrier, filed a Form CA-2 claim for an occupational disease, alleging that he developed a right-sided carpal tunnel condition causally related to employment factors.

On November 20, 2014 OWCP advised appellant that it required factual and medical evidence to determine whether he was eligible for compensation benefits. It asked him to submit a comprehensive report from a treating physician describing his symptoms and the medical reasons for his condition, with an opinion as to whether his claimed condition was causally related to his federal employment. OWCP requested that appellant submit this evidence within 30 days. Appellant did not submit any medical evidence.

By decision dated December 31, 2014, OWCP denied the claim, finding that he failed to submit medical evidence establishing that he sustained a right-sided carpal tunnel condition in the performance of duty.

On February 19, 2015 OWCP received a request for a review of the written record. The form was postmarked February 10, 2015. Appellant submitted a supplemental statement, as well as medical reports from Dr. Kent Simmons-Eldrageely,² and Dr. Michael Davies, a specialist in occupational medicine.

By decision dated March 25, 2015, OWCP denied appellant's request for a review of the written record on the basis that the request was untimely.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence

² The physician's credentials could not be verified.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed, or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶

ANALYSIS -- ISSUE 1

In the instant case, appellant has failed to submit any medical opinion containing a rationalized, probative report which relates his claimed right-sided carpal tunnel condition to factors of his employment. For this reason, he has not discharged his burden of proof to establish his claim that his condition was sustained in the performance of duty.

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated, or aggravated by his employment is sufficient to establish causal relationship.⁷ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

OWCP advised appellant of the evidence required to establish his claim and requested same. However, appellant failed to submit such evidence. Consequently, he has not met his burden of proof in establishing that his claimed right-sided carpal tunnel condition is causally related to his employment.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of FECA provides that a claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary.⁸ Section 10.615 of the federal regulations implementing this section of FECA provides that a

⁶ *Id.*

⁷ *Id.*

⁸ 5 U.S.C. § 8124(b)(1).

claimant shall be afforded a choice of an oral hearing or a review of the written record.⁹ The request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.¹⁰ A hearing is a review of an adverse decision by an OWCP hearing representative. Initially, the claimant can choose between two formats: an oral hearing or a review of the written record. In addition to the evidence of record, the claimant may submit new evidence to the hearing representative.¹¹ A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which the hearing is sought.¹² A claimant is not entitled to a hearing if the request is not made within 30 days of the date of the decision.¹³ OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.¹⁴ In such a case, it will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.¹⁵

While a claimant may not be entitled to a hearing as a matter of right if the request is untimely, OWCP has the discretionary authority to grant the request and must properly exercise such discretion.¹⁶

ANALYSIS -- ISSUE 2

On February 10, 2015 appellant requested a review of the written record. Because he did not request the review within 30 days of the December 31, 2014 decision, he was not entitled to a hearing as a matter of right under section 8124(b)(1). OWCP's Branch of Hearings and Review exercised its discretion and determined that the issue in the case could be resolved equally well through a request for reconsideration and the submission of additional evidence. The Board finds that OWCP did not abuse its discretion in denying appellant's request for a review of the written record in its March 25, 2015 decision.

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a right-sided carpal tunnel condition in the performance of duty. The Board further finds that OWCP properly denied appellant's request for a review of the written record as untimely under 5 U.S.C. § 8124.

⁹ 20 C.F.R. § 10.615.

¹⁰ *Id.* at § 10.616(a).

¹¹ *Id.* at § 10.615.

¹² *Supra* note 10.

¹³ *James Smith*, 53 ECAB 188 (2001).

¹⁴ 20 C.F.R. § 10.616(b).

¹⁵ *Supra* note 13.

¹⁶ *See id.*; *Cora L. Falcon*, 43 ECAB 915 (1992); *Mary B. Moss*, 40 ECAB 640 (1989); *Rudolph Bermann*, 26 ECAB 354 (1975).

ORDER

IT IS HEREBY ORDERED THAT the March 25, 2015 and December 31, 2014 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: August 20, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board